From: LERS, EOIR (EOIR)

To: All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of OCIJ JLC (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Barnes, Jennifer (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Carballo, Vivian (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Sheehey, Kate (EOIR); Stutman, Robin M. (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR); Wilson, Amelia (EOIR)

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Office of Policy | Legal Education and Research Services Division

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March 16, 2018

Federal Agencies

DOJ

- BIA Issues Decision in Matter of Cervantes Nunez — EOIR

  27 I&N Dec. 238 (BIA 2018)

  The crime of attempted voluntary manslaughter in violation of sections 192(a) and 664 of the California Penal Code, which requires that a defendant act with the specific intent to cause the death of another person, is categorically an aggravated felony crime of violence under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F) (2012), notwithstanding that the completed offense of voluntary manslaughter itself is not such an aggravated felony.

- BIA Issues Decision in Matter of Rosa — EOIR

  27 I&N Dec. 228 (BIA 2018)

  1) In deciding whether a State offense is punishable as a felony under the Federal Controlled Substances Act and is therefore an aggravated felony drug trafficking crime under section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(B) (2012), adjudicators need not look solely to the provision of the Controlled Substances Act that is most similar to the State statute of conviction.

  2) The respondent's conviction under section 2C:35-7 of the New Jersey Statutes for possession with intent to distribute cocaine within 1,000 feet of school property is for an aggravated felony drug trafficking crime because his State offense satisfies all of the elements of 21 U.S.C. § 841(a)(1) (2012) and would be punishable as a felony under that provision.

- Immigration Attorney Sentenced to More Than Six Years in Prison for Fraud Scheme and Identity Theft in Relation to Visa Applications

  On March 9, an immigration attorney was sentenced in the Southern District of Indiana to 75 months in prison for defrauding over 250 of his clients and USCIS by filing fraudulent visa applications and obtaining approximately $750,000 in illegitimate fees. Attorneys from the Criminal Division's Public Integrity Section prosecuted the case. It was

investigated by ICE Homeland Security Investigations (HSI) Directorate with the assistance of USCIS Fraud Detection and National Security Directorate.

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- USCIS Efforts Lead to Sentencing of Former Stamford Resident for Operating Extensive Immigration Fraud Scheme

  According to court documents and statements, the defendant attempted to obtain false immigration status from USCIS for over 60 citizens of European countries. Foreign nationals paid the defendant between $12,000 and $20,000, to arrange sham marriages with U.S. citizens to obtain immigration benefits for the foreign nationals. The U.S. citizens were also paid to enter into the sham marriages.

- USCIS Efforts Lead to Marriage Fraud Conviction in Albany

  The evidence at trial demonstrated that in April 2014, the defendant and a U.S. citizen agreed to marry in order to obtain immigration benefits. The U.S. citizen received approximately $3,500 over the course of the marriage.

DOS

- DOS Posts April 2018 Visa Bulletin

  The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

Second Circuit

- Obeya v. Sessions

  No. 16-3922-ag, 2018 WL 1189417 (2d Cir. Mar. 8, 2018) (CIMT)

  The Second Circuit granted the PFR and reversed the Board's decision in Matter of Obeya, 26 I&N Dec. 856 (BIA 2016). Weighing the factors outlined in Lugo v. Holder, 783 F.3d 119 (2d Cir. 2015), the court concluded that the Board erred when it retroactively applied a new rule announced in Matter of Diaz-Lizarraga, 26 I&N Dec. 847 (BIA 2016), regarding when theft crimes involved moral turpitude. Applying the Board's pre-Diaz-Lizarraga standard for larceny crimes involving moral turpitude, the court also concluded that the petitioner's 2008 conviction in violation of N.Y. Penal Law § 155.25 (petit larceny) did not categorically constitute a crime involving moral turpitude because the offense does not require an intent to permanently deprive the owner of property.

Fourth Circuit

- United States v. James

  No. 17-4111, 2018 WL 1225729 (4th Cir. Mar. 9, 2018) (unpublished) (Crime of violence)

  The Fourth Circuit affirmed the district court's judgment, concluding that the petitioner's conviction in violation of Va. Code Ann. § 18.2-51 (unlawful wounding) qualifies categorically as a crime of violence under the force clause of U.S.S.G. § 4B1.2(a)(1) (same as 18 U.S.C. § 16(a)). The court determined that the state statute, "by virtue of requiring not only the causation of bodily injury but also the specific intent to maim, disfigure, disable, or kill, necessarily involves the use of violent force or, at minimum, the attempted or threatened use of such force." On the same day, and employing the same reasoning as

in James, the Fourth Circuit in United States v. Jenkins, No. 16-4121, 2018 WL 1225728 (4th Cir. Mar. 9, 2018) (unpublished), affirmed the district court's judgment, concluding that the petitioner's prior convictions in violation of Va. Code Ann. § 18.2-51 (unlawful wounding) qualify categorically as violent felonies under the force clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 USC § 16(a)).

Fifth Circuit

- City of Cenizo, Texas v. Texas

  No. 17-50762, 2018 WL 1282035 (5th Cir. Mar. 13, 2018)

  The Fifth Circuit held that Texas law Senate Bill 4 (SB4), which forbids "sanctuary city" policies throughout the state, does not violate the Constitution on its face. Specifically, the court found that the plaintiffs did not make a showing that SB4 is preempted by federal immigration law, that SB4's ICE-detainer mandate violates the Fourth Amendment, or that SB4's phrase "materially limits" is unconstitutionally vague under the Fourteenth Amendment. Accordingly, the court largely vacated the district court's preliminary injunction. The court also affirmed the district court's injunction narrowly—preventing enforcement of Tex. Gov't Code § 752.053(a)(1)'s "endorse" provision against elected officials.

- Solorzano-De Maldonado v. Sessions

  No. 16-60153, 2018 WL 1192988 (5th Cir. Mar. 7, 2018) (unpublished) (Asylum-PSG)

  The Fifth Circuit denied the PFR, agreeing with the Board that the petitioners did not establish that "single women that live alone and are targeted by gangs for sexual abuse" constitute a socially distinct group in El Salvador. The court distinguished the instant case from Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014), in that "there was no evidence in the record demonstrating that there are particular laws in El Salvador intended to protect single women living alone and targeted by gangs for sexual abuse," and that nothing in the record showed that Salvadoran society at large considered the petitioners' proposed PSG to be a socially distinct group.

Ninth Circuit

- United States v. Verduzco-Rangel

  No. 15-50559, 2018 WL 1220747 (9th Cir. Mar. 9, 2018) (Agg Fel)

  The Ninth Circuit affirmed the district court's judgment, concluding that the petitioner's conviction in violation of Cal. Health & Safety Code § 11378 (felony possession for sale of methamphetamine) is a drug trafficking aggravated felony, as defined by section 101(a)(43)(B) of the Act, for purposes of section 237(a)(2)(A)(iii) where the record of conviction establishes that the substance involved was federally controlled. The court stated that the California statute (which is a divisible statute that triggered application of the modified categorical approach) contains an "illicit trafficking" element, and it requires that the defendant intend to possess for sale a controlled substance and actually possess for sale a controlled substance, and that both the intended substance and the actual substance be controlled.

Tenth Circuit

- United States v. Degeare

  No. 17-6080, 2018 WL 1280278 (10th Cir. Mar. 13, 2018) (Divisibility)

The Tenth Circuit reversed the district court's order, concluding that the district court erred in relying on the modified categorical approach to treat the petitioner's prior 1994 convictions in violation of Okla. Stat. Ann. tit. 21, § 888 (forcible sodomy), as violent felonies (and ACCA predicates) for purposes of denying the petitioner's § 2255 motion. Determining that state case law does not "definitively" resolve the means-or-elements question at issue in this case, the court looked to the statutory language and then to the records underlying the petitioner's convictions, per Mathis v. United States. The court concluded that it was not "certain" that § 888(B) is "necessarily" divisible and a violent felony, and it declined to address the precise level of certainty this standard requires because the term does not encompass the significant doubt left in this case. The court held that Taylor v. United States requires it to be at least more certain than not that a statute's alternatives constitute elements before it will treat that statute as divisible.

Eleventh Circuit

- Francisco v. U.S. Att'y Gen.

  No. 15-13223, 2018 WL 1249998 (11th Cir. Mar. 12, 2018) (Agg Fel)

  The Eleventh Circuit granted the PFR and remanded, relying on its recent holding in Cintron v. U.S. Att'y Gen., Nos. 15-12344, 15-14352, 2018 WL 947533 (11th Cir. 2018), which involved a subsection of the same statute with "substantively identical language," to conclude that Fla. Stat. § 893.135(1)(b) (trafficking in cocaine) is not an aggravated felony. Therefore, the court found that the petitioner's conviction under this statute did not disqualify him from cancellation of removal since the statute is "neither divisible nor has a categorical match in the Controlled Substance Act."